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No. 1066

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

CITY OF PHOENIX, ARIZONA, et al.,

Appellant,

vs.

EMILY KOLODZIEJSKI,

Appellee.

On Appeal from the United States District Court
for the District of Arizona

BRIEF FOR SPECIAL TAX SCHOOL DISTRICT NUMBER ONE OF THE COUNTY OF HILLSBOROUGH, FLORIDA AS AMICUS CURIAE

W. CROSBY FEW
725 East Kennedy Boulevard
Tampa, Florida
Attorney for the School Board
of Hillsborough County, Florida

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INTEREST OF AMICUS CURIAE

MAY IT PLEASE THE COURT:

This brief is filed on behalf of Special Tax School District Number One of the County of Hillsborough, a political subdivision of the State of Florida, hereinafter referred to as School District, and is sponsored by the attorney of the School Board of Hillsborough County, Florida, the authorized law officer thereof, under Rule 42 (4) of the Rules of the Supreme Court of the United States. The School District's interest is that on July 15, 1969 an election was held in the School District at which only property taxpaying electors were permitted to vote on the question of authorizing an ad valorem bond issue of the School District in the amount of $19,150,000.00 for the purpose of acquiring, building, enlarging, furnishing or otherwise improving school buildings or school grounds

and for other capital school purposes. Such an election is required by the Constitution of the State of Florida, Article VII, Section 12[1] and by applicable statutes[2] and is limited to electors who are owners of freeholds not wholly exempt from taxation. When issued, all of such bonds will be general obligations of the School District payable from ad valorem taxes. In a proceeding instituted by the School District pursuant to the provisions of Chapter 75, Florida Statutes, the bonds were held to be legal and valid general obligations of the School District by a judgment of the Circuit Court for Hillsborough County, Florida rendered on November 12, 1969.[3]

By reason of the prior opinions of the Court in *Cipriano v. City of Houma*, 395 U.S. 701, 89 S.Ct. 1897, 23 L.Ed. 2d 647 (1969) and *Kramer v. Union Free School District*, 395 U.S. 621, 89 S.Ct. 1886, 23 L.Ed. 2d 583 (1969), a suit was instituted in the United States District Court for the Middle District of Florida by certain qualified voters of the School District who paid no real property taxes seeking to have Section 12, Article VII of the Constitution of Florida declared unconstitutional on the ground that the limitation in bond elections to electors who are owners of freeholds not wholly exempt

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[1] Article VII, Section 12 reads as follows: SECTION 12. Local bonds.—Counties, school districts, municipalities, special districts and local governmental bodies with taxing powers may issue bonds, certificates of indebtedness or any form of tax anticipation certificates, payable from ad valorem taxation and maturing more than twelve months after issuance only:

(a) to finance or refinance capital projects authorized by law and only when approved by vote of the electors who are owners of freeholds therein not wholly exempt from taxation; or

(b) to refund outstanding bonds and interest and redemption premium thereon at a lower net average interest cost rate.

[2] Sections 236.37-39, Florida Statutes.

[3] The Board of Public Instruction of Hillsborough County, Florida, for and on behalf of Special Tax School District Number One, Plaintiff, vs. State of Florida, and the Taxpayers, Property Owners and Citizens of the County of Hillsborough, including non-residents owning property or subject to taxation therein, Defendants.

from taxation violates the equal protection clause in the Fourteenth Amendment to the United States Constitution.[4]

The opinion of the Court in the *Cipriano* case, supra, and the institution of the proceedings in the United States District Court for the Middle District of Florida, have impaired the marketability of the bonds of the School District because prospective purchasers fear that such bonds will be subsequently declared void if issued in reliance upon the bond election held on July 15, 1969.

The School District cannot submit the bond issue to a second election in which all qualified voters may participate since there are no laws in the State of Florida which would authorize the holding of such an election.

The School District urges the Court to declare valid the bond election held by the City of Phoenix even though such election was restricted to property taxpaying voters.

The School District submits that the facts and questions of law pertaining to bond issues of political subdivisions of Florida cannot be adequately presented by the parties because such parties are only involved with questions of Arizona law.

ARGUMENT

Point I

Special Tax School District Number One of Hillsborough County, Florida has authorized the issuance of $19,150,000.00 general obligation bonds for the improvement of school facilities. Pursuant to Article VII, Section 12(a) of

[4] Jim Fair, Plaintiff, and Elizabeth M. Axtell and Nell S. Stewart, Intervenors, vs. Jim Fair, as Supervisor of Elections, Board of Public Instruction, County Election Board, Board of County Commissioners, all of Hillsborough County, Florida, and the Attorney General of Florida, Earl Faircloth, Defendants, Civ.T. #69-263, in the United States District Court for the Middle District of Florida, Tampa Division.

the Constitution of the State of Florida,[5] these bonds were voted at an election limited to electors who were owners of freeholds therein not wholly exempt from taxation. The decision in *Cipriano v. City of Houma,* 395 U.S. 701, 89 S.Ct. 1897, 23 L.Ed.2d 647 (1969) held that the provisions of Louisiana law restricting to property taxpayers the right to vote in *revenue* bond elections violate the equal protection clause of the Fourteenth Amendment of the United States Constitution. This doctrine may likewise be applied subsequently to preclude states in their constitutions and statutes from restricting to property owners or taxpayers the right to vote in general obligation bond elections. Consequently, prospective purchasers are reluctant to purchase the bonds voted at the School District election.

The *Cipriano* case and *Kramer v. Union Free School District,* 395 U.S. 621, 89 S.Ct. 1886, 23 L.Ed.2d 583 (1969), indicate that state constitutional provisions and statutes having a voter classification are not in violation of the equal protection clause of the Fourteenth Amendment of the United States Constitution where (1) the exclusions are necessary to promote a compelling state interest and (2) those persons excluded are in fact substantially less interested or affected than those included. The Court, therefore, should hold that general obligation bonds payable solely from ad valorem taxes are in a separate category from revenue bonds, and thus are constitutionally capable of being approved in an election limited to those qualified voters who pay property taxes. The impact of the issuance of general obligation bonds on property owners is directly related to their status as property taxpaying electors. A person who is not a property owner and who does not pay property taxes has only an indirect and remote interest in the issuance of such bonds. The *Cipriano* decision was based on the fact that property owners alone were allowed to

[5] *Supra,* note 1.

vote on a *revenue* bond issue to be paid by both property owners and non property owners from sources other than ad valorem taxation. As stated in the *Cipriano* case the impact of the revenue bond issue on both classes of individuals was entirely unconnected to their status as property taxpayers. If the decision of the *Cipriano* case is extended to general obligation bonds, both property owners and non property owners will be allowed to vote in bond issues which will be directly paid only by property owners.

The Court is respectfully requested not to extend the *Cipriano* decision to elections authorizing the issuance of general obligation bonds.

Point II

If the Court holds invalid the general obligation bond election of the City of Phoenix, it is respectfully requested that such decision be limited specifically to the State of Arizona. The reasons for the constitutional classification which exist in Arizona may not necessarily be the same as those which exist in Florida.

Neither the Constitution nor the general laws of the State of Florida require that revenue bonds be approved at *any* election. As stated above, under the Constitution and statutes of the State of Florida, a political subdivision may issue bonds payable from ad valorem taxes only if such bonds are approved by the electors who are owners of freeholds not wholly exempt from taxation. The sole question, therefore, is whether this constitutional classification of voters violates the equal protection clause of the Fourteenth Amendment by rendering ineligible to vote those otherwise qualified voters who do not pay taxes on real estate.

The validity of the Florida Constitution and statutes depends upon whether the particular classification of voters is

reasonable under the circumstances existing within the State of Florida.

In *Walters v. City of St. Louis,* 347 U.S. 231, 98 L.Ed. 660, 74 S.Ct. 505, (1954) the Court stated:

> "* * *. Equal protection does not require identity of treatment. It only requires that classification rest on real and not feigned differences, that the distinction have some relevance to the purpose for which the classification is made, and that the different treatments be not so disparate, relative to the difference in classification, as to be wholly arbitrary."

In *Carrington v. Rash,* 330 U.S. 89, 13 L.Ed.2d 675, 85 S.Ct. 775, (1965) the Court said:

> "* * *. There can be no doubt either of the historic function of the States to establish, on a nondiscriminary basis, and in accordance with the Constitution, other qualifications (than residence) for the exercise of the franchise. Indeed the States have long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised * * *."

The forerunner of the provision of the Florida Constitution relating to the issuance of bonds by the political subdivisions was first ratified by all the qualified electors of the State in 1929[6] to correct gross abuses arising out of the Florida real

[6] Article IX, Section 6, Constitution of Florida 1885, as amended. Section 6. Bonds; state, county, municipal.—The Legislature shall have power to provide for issuing State bonds only for the purpose of repelling invasion or suppressing insurrection, and the Counties, Districts, or Municipalities of the State of Florida shall have power to issue bonds only after the same shall have been approved by a majority of the votes cast in an election in which a majority of the freeholders who are qualified electors residing in such Counties, Districts, or Municipalities shall participate, to be held in the manner to

estate boom of the 1920's. The history of and reasons for these constitutional provisions have been clearly stated by the Supreme Court of Florida in a number of decisions.

In *Cloverleaf v. City of Jacksonville*, 135 Fla. 341, 199 So. 923, (1941) the Court said:

> "After the period of almost uncontrolled incurrence of debt by municipal corporations in 1925 and succeeding years, of which all know *and we take judicial notice*, restraint on the part of the people was decided upon so that governing authorities could not, without the approval of those who would bear the burden, encumber the property of taxpayers * * *." (Italics supplied)

Likewise in *State v. Florida State Improvement Commission*, 60 So. 2d 747, (Fla. 1952), the Court elaborated at length upon the history of these particular provisions of the Constitution and the reasons for their adoption. The Court stated:

> "Prior to the adoption of the amended Section 6 of Article IX of the State Constitution, bonds could be issued for any county purpose and without the vote of the freeholders or the people of the county if properly authorized by the Legislature. * * * The only acts necessary for the issuance of such bonds and the levy and collection of ad valorem taxes were to have a delegation in the Legislature from the county who would put through a special act and a board of county commissioners of a county who

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[6] (Continued)
be prescribed by law; but the provisions of this act shall not apply to the refunding of bonds issued exclusively for the purpose of refunding of the bonds or the interest thereon of such Counties, Districts, or Municipalities.

would perform under the Act and then bonds could be issued *and ad valorem taxes* levied without any vote of the freeholders or the people who had to pay the bill.

"* * *

"Many of us lived through the times immediately prior to the adoption of the amended Section 6 of Article IX of the State Constitution, and are thoroughly familiar with the conditions and the history of the times which resulted in a demand on the part of the people for this amendment.

"Hundreds of millions of dollars in bonds had been issued by municipalities and counties throughout the state. These bonds were issued pursuant to hundreds of special acts of the Legislature. These acts were passed by the Legislature as local bills and without the approval of anyone except the delegation in the Legislature from the county affected. Under these various acts, ad valorem taxes were levied and the future credit of the governmental unit pledged without the approving voice of the freeholders or the people who had to pay the taxes. Most of these bonds were issued during the period known as the 'Boom Days'. The 'Boom' burst—a depression was on and the people and the freeholders found themselves saddled with debts impossible for them to pay. Millions of these bonds sold for less than 20% of par and some of them for less than 10% of par. Defaults multiplied throughout the state. The effect was as could be expected. The people awakened to the fact not only that an intolerable burden had been placed upon them far beyond their ability to pay, but also that the very welfare of the State was threatened, because of the weak-

ened credit structure. Indeed, such was the impact that even the Congress of the United States took cognizance of the financial condition of Florida municipalities and amended the Federal Bankruptcy Act, 11 U.S.C.A. §1 et seq., so as to bring bankrupt municipalities within its terms. Many Florida cities and towns took advantage of this amended act.

"It was during such times and under these conditions that the Legislature of 1929, in response to the demands of the people, adopted the proposal to amend Section 6 of Article IX of the Constitution. In the ensuing general election the proposed amendment was adopted. There are no exceptions in the amendment." (Italics supplied)

By reason of the constitutional history of Florida as related by the Florida Supreme Court, the requirement that bonds payable from ad valorem taxation be approved by vote of the electors who are owners of freeholds not wholly exempt from taxation serves a compelling state interest and provides a reasonable classification well within the approved limits of the equal protection clause of the Fourteenth Amendment to the United States Constitution. The issuance of general obligation bonds is directly connected to the status of the participating electors as property taxpayers. These taxpayers who are permitted to vote in general obligation bond elections have a substantial and direct interest in the decision as to whether such bonds should be issued.

Point III

Should the Court decide that the election at which the City of Phoenix approved the general obligation bonds in question was invalid due to its limitation to property taxpaying voters, it is respectfully requested that such a decision be

applied prospectively and not retroactively. The Court in the *Cipriano* case stated that in some circumstances a state might constitutionally limit the election franchise to qualified voters who are specially interested in the election and indicated that such a result could be legally possible where the impact of a bond issue is directly connected to their status as property taxpayers. A fair reading of the opinion of the Court in the *Cipriano* case discloses an intent on the part of the Court to limit its decision to those elections controlling the issuance of revenue bonds as distinguished from general obligation bonds.

Accordingly, some general obligation bonds have been issued by political subdivisions in Florida pursuant to elections limited to property taxpaying electors held subsequent to the decision of this Court in the *Cipriano* case. No purpose could be served in a retroactive application of the Court's decision since substantial injustice and hardship could result under such circumstances.

SUMMARY OF ARGUMENT

The decision of this Court in *Cipriano v. City of Houma*, 395 U.S. 701, 89 S.Ct. 1897, 23 L.Ed.2d 647 (1969) created uncertainty as to the constitutionality of statutory or state constitutional provisions permitting only property taxpaying electors to vote in general obligation bond elections. Amicus Curiae respectfully requests that the Court rule for the City of Phoenix and hold that general obligation bond elections are valid when restricted to property taxpaying electors for the reason that the persons within this classification pay the bonds through ad valorem taxes and thus are the only persons directly interested and affected. Second, should the Court rule against the City of Phoenix, it is respectfully requested that the decision be limited to the State of Arizona, as such a decision may be reasonable when applied in Arizona but unreasonable when applied in other states. Third. if the

Court decides against the City of Phoenix, it is urged that the decision be applied prospectively and not retroactively, in order that past innocent purchasers of general obligation bonds do not suffer an injustice or hardship.

CONCLUSION

The Arizona constitutional provision restricting the franchise in general obligation bond elections to taxpaying property owners is a reasonable classification. When such a classification is reasonable, it should be upheld since the equal protection clause of the Fourteenth Amendment does not prohibit the states from providing the political machinery suitable for local needs and problems. Thus Special Tax School District Number One of the County of Hillsborough, Florida, as Amicus Curiae, urges the Court to decide in favor of the validity of the general obligation bond election of the City of Phoenix, Arizona. Should the Court decide against the validity of that election, it is requested that the decision be limited to the City of Phoenix. It is also requested that the decision be given non-retroactive application.

Respectfully submitted,

W. Crosby Few
725 East Kennedy Boulevard
Tampa, Florida

PROOF OF SERVICE

I, the undersigned counsel for Amicus Curiae, Special Tax School District Number One of the County of Hillsborough, Florida, do hereby certify that a copy of the foregoing brief has been served on all counsel in this matter by depositing a copy thereof in the United States Mail, postage prepaid, addressed to each of them at his respective address of record.

this 11th day of February, 1970.

W. Cooley Fees